

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9922 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

UDESING @ BHAGAT BECHARJI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR CC BHALJA, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the petitioner has prayed for quashing the detention order dated 24.2.1998, Annexure "B" to the writ petition passed by the Police Commissioner, Ahmedabad City under section 3(2) of the

Prevention of Antisocial Activities Act (for short PASA).

It is necessary to point out that the petitioner having remained in jail for about 11 months after the impugned order of detention, preferred to file this writ petition as late as on 29.1.1999. It has, therefore, come up for hearing according to date of actual detention though it was filed on 29.1.1999.

The only ground on which the detention order is challenged is that the activities of the petitioner as disclosed in the grounds of detention cannot be said to be prejudicial for maintenance of public order. The learned Assistant Government Pleader on the other hand contended that the activities of the petitioner were prejudicial for maintenance of public order.

The registration of three cases under Bombay Prohibition Act; in the year 1997, was sufficient material and ground for the Detaining Authority to declare the petitioner as bootlegger within the meaning of Section 2(b) of the PASA Act. However, it has further to be seen whether the activities of the bootlegger were prejudicial for maintenance of public order. From the grounds of detention it can not be said that the registration of three cases under Bombay Prohibition Act give indication that the activities of the petitioner in those three cases were prejudicial for maintenance of public order.

Then remains the statements of two confidential witnesses who have stated about the two incidents dated 25.1.1998 and 1.2.1998. From perusal of the extracts of these statements no reasonable man much less this Court can hold that the activities of the petitioner on those two occasions were prejudicial for maintenance of public order. Unless the activities of the petitioner were found to be prejudicial for maintenance of public order, no order of detention under PASA could be passed against him.

For the reasons stated above, the writ petition succeeds and is hereby allowed. The impugned order of detention dated 24.2.1998, Annexure "B" to the writ petition is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt